



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/166583

PRELIMINARY RECITALS

Pursuant to a petition filed June 10, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Washburn County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on July 23, 2015, at Shell Lake, Wisconsin.

The issue for determination is whether the county agency presented enough evidence to substantiate its decision to reduce the petitioner's FoodShare allotment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Susan Conaway

Washburn County Department of Social Services
110 W 4th Avenue
PO Box 250
Shell Lake, WI 54871

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Washburn County.
2. The county agency reduced the petitioner's FoodShare allotment from \$262 to \$61 per month as of June 2015.

3. The county agency did not provide any documentation of its claim except a printout of the amount of FoodShare benefits the petitioner's household received each month from July 2014 through June 2015.

DISCUSSION

FoodShare eligibility and the amount of FoodShare one can receive depends upon net income. Net income is determined after subtracting those deductions—and only those deductions—found in 7 CFR § 273.9(d) from gross income. The county agency reduced the petitioner's FoodShare allotment from \$262 to \$61 per month in June 2015 because it contends that her household's income increased.

The household's income clearly did increase because the petitioner's husband now has a profit instead of a loss from his business. The problem is that the agency did not provide any documentation showing how it arrived at the result it did. (It did provide a printout of the amount of FoodShare the petitioner received each month in the last year, but this does not show how it calculated the benefits for any of those months.) There was some testimony concerning the petitioner's various household deductions, but I could not calculate her benefits from this precisely enough to arrive at a particular monthly allotment. When a worker appears at these hearings, she is expected to submit enough documentation to prove her claim, just as a recipient must submit enough verification to justify whatever allotment she may receive. Because I do not have enough information to determine the petitioner's correct allotment, I am going to order the agency to return her allotment to \$262 per month retroactive to June 1, 2015.

I note that the agency can provide a new notice to the petitioner reducing her FoodShare allotment based upon her current household income. However, any benefits she receives until then is not an overpayment because they are made pursuant to a valid order of the Division of Hearings and Appeals. If the petitioner appeals again, the agency will be expected to present enough evidence to support its claim. Before challenging an agency's decision, the petitioner should be aware that any benefits she receives after the agency next notice of decision goes into effect may constitute an overpayment. For example, if the agency notifies her on August 5, 2015, that it will reduce her benefits as of September 1, 2015, any benefits she receives that she is not entitled to from September 1, 2015, forward would be considered an overpayment.

CONCLUSIONS OF LAW

The county agency has not presented sufficient evidence to support its decision to reduce the petitioner's FoodShare allotment.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it reinstate the petitioner's FoodShare at the \$262 level retroactive to June 1, 2015, and that it issue a supplemental allotment for any previously reduced benefits. Nothing in this order prevents the agency from reducing the petitioner's future FoodShare allotment based upon evidence it has of her household's financial situation.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

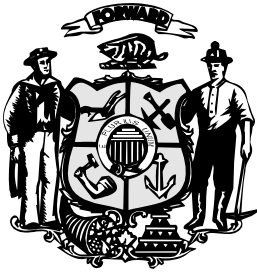
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 27th day of July, 2015

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 27, 2015.

Washburn County Department of Social Services
Division of Health Care Access and Accountability